NO. 46459-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RYAN JACOB SCHECHERT,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 13-1-01046-0

BRIEF OF RESPONDENT

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	Jodi R. Backlund Po Box 6490 Olympia, Wa 98507-6490 Email: backlundmistry@gmail.com	This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, *or, if an email address appears to the left, electronically*. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED June 1, 2015, Port Orchard, WA **Original e-filed at the Court of Appeals; Copy to counsel listed at left.**

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1. Whether trial counsel's performance was ineffective where the decisions he made were strategic and his performance did not fall below an objective standard of reasonableness and where Schechert cannot show any resulting prejudice?

2. Whether the prosecutor committed misconduct during closing where it was properly argued that Schechert's excuse for missing his court date was not an "uncontrollable circumstance" and there is no evidence that this alleged misconduct affected the verdict?

3. Whether the trial court erred by permitting testimony by Christopher Hutchison that he had used methamphetamine in Schechert's house with him a week and a half prior to his arrest where Mr. Hutchison testified that Schechert supplied the methamphetamine from one of the back bedrooms and the trial court properly weighed the ER 404(b) factors before permitting the evidence?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Ryan Jacob Schechert was charged by information filed in Kitsap County Superior Court with possession of a controlled substance methamphetamine and bail jumping. CP 22-24. A jury found Schechert guilty as charged. CP 57.

B. FACTS

On June 5, 2013, Detective Lori Blankenship of the Kitsap County Sheriff's Office obtained a search warrant for Schechert's residence at 2315 Sidney Avenue in Port Orchard, Washington. RP (5/28) 135-36. The warrant was executed that same day. RP (5/28) 136. Schechert was present during the search. RP (5/29) 148.

Detective Gerald Swayze was responsible for searching the master bedroom of the residence. RP (5/29) 175. He found numerous pieces of mail and identification belonging to Schechert. RP (5/29) 177. He also found clothing and other items that appeared to belong to a male. RP (6/2) 375-76. He did not locate any paperwork or other objects that appeared to belong to anyone else. RP (6/2) 373-76. On a shelf, Swayze located a traffic citation belonging to Schechert; next to that citation was a small gold compact that contained 1.9 grams of methamphetamine. RP (5/29) 178, 212, 236, 247. The compact was lying in plain view on the shelf. RP (5/29) 178. Schechert said that the compact was not his, that he had never seen it before, and that he did not know how it had gotten into his house. RP (5/29) 312-13.

Schechert was in the process of moving out of the residence on Sidney Avenue. RP (5/29) 307. Schechert said he often had people over at his residence, both men and women, and that he let a number of them

store items at his house. RP (5/29) 271, 312. He did not sleep in the bedroom, but in a recliner in the living room. RP (5/29) 271. He said the room where the methamphetamine was found was used mostly for storage. RP (5/29) 271-72.

Christopher Hutchison, an acquaintance of Schechert, was also at the residence on the day the search warrant was executed. RP (5/29) 230-31. He had been over to the house several times, but denied the methamphetamine in the compact was his. RP (5/29) 232-33. Mr. Hutchison said the last time he had been at Schechert's residence was about a week to a week and a half prior to the search of the house. RP (6/2) 385-85. While there, he saw Schechert go into one of the back bedrooms and came out with a pipe containing methamphetamine. RP (6/2) 387. They then passed around the pipe and smoked the methamphetamine. RP (6/2) 386-87.

On January 13, 2014, Schechert was given an order setting his next court date for February 10, 2014 at 9:00 a.m. RP (5/28) 124, 126. On February 10, 2014, the court polled the courtroom for Schechert, but he was not there and a bench warrant was issued. RP (5/28) 127-28. Schechert next appeared in court on February 13, 2014 to quash his warrant. RP (5/28) 128-29. During that hearing, with Schechert present, his attorney said he had missed the court date because he thought that his

trial was on Thursday not on Monday. RP (5/29) 304.

On February 13, 2014, Schechert was living with his uncle and cousin. RP (5/29) 272. That morning, his uncle had been released from a rehabilitation center after a triple by-pass surgery. RP (5/29) 272-73. Schechert's cousin had to go pick up medications and Schechert said that his uncle was in bad shape, unable to walk without a walker and in need of attention. RP (5/29) 272. Schechert said he was not prepared to be a caregiver and overwhelmed when his uncle came home that morning which was why he missed court. He called his attorney the following morning to make arrangements to come in and have his warrant quashed. RP (5/29) 274-75.

III. ARGUMENT

A. TRIAL COUNSEL'S PERFORMANCE WAS NOT INEFFECTIVE BECAUSE IT DID NOT FALL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND EVEN IF IT DID, SCHECHERT CANNOT SHOW THAT HE WAS PREJUDICED BY TRIAL COUNSEL'S PERFORMANCE

Schechert argues that trial counsel was ineffective for multiple reasons. All of his claims fail because the performance of trial counsel did not fall below an objective standard of reasonableness and, even if it did, he can show no resulting prejudice.

In order to prevail on an ineffective assistance claim, Schechert

must show that trial counsel's performance was deficient and that this deficiency was prejudicial to him. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052 (1996). An attorney's performance is deficient if it falls "below on objective standard of reasonableness based on consideration of all the circumstances." *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). To show prejudice, Schechert must demonstrate that there is a reasonable probability that but for trial counsel's deficient performance, the outcome would have been different. *State v. Leavitt*, 111 Wn.2d 66, 72, 758 P.2d 982 (1988). There is a strong presumption that an attorney's performance was reasonable; if the conduct can be characterized as legitimate trial strategy or tactics, the performance is not deficient. *State v. Studd*, 137 Wn.2d 533, 551, 973 P.2d 1049 (1999); *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996).

1. Trial counsel properly researched and argued the concept of constructive possession and tried to show that Schechert was not the owner of the compact

Schechert first contends that trial counsel's failure to research law on constructive possession was ineffective. Schechert appears to argue that trial counsel failed to show that someone other than he owned the compact. This claim is without merit because it is clear that trial counsel did recognize that ownership of the compact was important and argued on multiple occasions that others had access to the house and could have been the owners of the methamphetamine.

Constructive possession, which is dominion and control over an item, is established by examining the totality of circumstances, which can include the proximity of the property and ownership of the area where the contraband is found. *State v. Turner*, 103 Wn. App. 515, 522-23, 13 P.3d 234 (2000). There must be substantial evidence from the totality of circumstances for the fact finder to infer a defendant had dominion and control. *State v. Cote*, 123 Wn. App. 546, 549, 96 P.3d 410 (2004). Mere proximity to the item in question is not enough to infer constructive possession. *Id.*, 123 Wn. App. at 549.

In *State v. Callahan*, 77 Wn.2d 27, 459 P.2d 400 (1969), the Court found that the State had not established constructive possession. There, the defendant had been a guest on a houseboat for two or three days. Most of the drugs were found near him and he had admitted to handling them, but key for the Court was that another individual had testified that the drugs were his and that he had brought them on to the boat. *Id.* at 31.

Schechert relies on *Callahan* to argue that ownership of the compact was highly relevant and any evidence regarding ownership was important. While certainly true, *Callahan* is different than the present case—in *Callahan*, another individual testified that the drugs were his; no such facts exist in Schechert's case. The fact that this did not come up at trial is not because of the ineffectiveness of trial counsel, but simply a

result of the evidence in the case. Evidence was presented at trial that someone other than Schechert could have been the owner of the drugs; it simply was not convincing evidence for the jury.

Examining the totality of circumstances demonstrates there is substantial evidence to infer that Schechert was in constructive possession of the methamphetamine. He was the only individual who lived in the home. RP (5/29) 507. And although he claimed that he stored items for others, no items belonging to a female were located in the residence. RP (6/2) 373-76. Moreover, numerous items of Schechert's were located on the shelf where the methamphetamine was found, including his identification. RP (5/29) 177-78. Despite this evidence, trial counsel was still able to argue that other individuals had access to the home and could have left the methamphetamine in the home. RP (5/29) 271, 312. Schechert can point to nothing on the record to support his argument trial counsel's performance was deficient in this area.

In *State v. Kyllo*, 166 Wn.2d 856, 215 P.3d 177 (2009), the defense did not object to a jury instruction that misstated the law on self-defense. The Court found that counsel's performance was ineffective because there were two decisions at the time of the trial that clearly indicated the submitted jury instruction should not have been used. *Id.*, 166 Wn.2d at 868. There was no legitimate trial tactic that could explain why counsel

failed to do proper research on the instruction. *Id.*, 166 Wn.2d at 869. But *Kyllo* is clearly distinguishable from the present case. First, Schechert fails to point out exactly where trial counsel was deficient in his research. Second, unlike *Kyllo*, research into the law on constructive possession would not reveal a clearly different or contrary position, a key factor for the *Kyllo* court. There is simply no evidence on the record to support Schechert's claim that trial counsel was ineffective in his argument on constructive possession.

2. Trial counsel properly argued the law on "other suspect" evidence and presented evidence at trial that others could be the owner of the compact

Next, Schechert argues that trial counsel was ineffective because he failed to research the law on other suspect evidence. He claims that trial counsel simply agreed with the prosecutor's position on "other suspect" evidence and that by doing so, he was unable to pursue a theory that an individual named Kaylee Mead owned the compact and therefore the drugs within. This argument also fails because trial counsel did present evidence at trial that Schechert was not the owner of the compact.

In examining whether or not other suspect evidence should be excluded, the general rule is that a court cannot exclude this evidence based on the perceived strength of the State's case. *Holmes v. South Carolina*, 547 U.S. 319, 327-29, 126 S. Ct. 1727 (2006). A court's focus

must be on the relevance of the evidence, and its probative value. *Id.*, 547 U.S. at 329. For other suspect evidence to be admissible, "some combination of facts or circumstances must point to a nonspeculative link between the other suspect and the charged crime." *State v. Franklin*, 180 Wn.2d 371, 381, 325 P.3d 159 (2014).

Schechert relies on *State v. Maupin*, 128 Wn.2d 918, 913 P.2d 208 (1996), for his proposition that trial counsel took too broad of a position on the concept of other suspect evidence. In *Maupin*, the trial court excluded evidence from a witness who claimed to have seen a victim with another individual the day after the defendant allegedly kidnapped and killed her. *Id.*, 128 Wn.2d at 922. The Court found error because the evidence linked another individual directly to the crime. *Id.*, 128 Wn.2d. at 926. No such evidence was barred in Schechert's case. He concedes that Kaylee Mead could not be located. This means that any out of court statements that she made regarding her use of methamphetamine in Schechert's home were inadmissible.

In pretrial motions, the State filed a brief requesting that defense be required to present on offer of proof regarding any "other suspect" evidence Schechert planned on arguing at trial. CP 10-16. Trial counsel was rightfully concerned that testimony others had smoked methamphetamine with Schechert was propensity evidence and had to

walk the line between pointing out that others were in and out of Schechert's home without opening the door to these prior bad acts. RP (5/29) 298-300. This was clearly a tactical decision and not ineffective assistance.

3. Trial counsel's investigation in the case clearly met the standards and was not ineffective

Schechert also argues that trial counsel did not notice the gold compact had the initials "KMM" on it and therefore failed to do reasonable investigation. But that is simply not the case. It is clear from the record that trial counsel made multiple arguments that Schechert was not the owner of the compact. RP (5/29) 234; 270-71. The fact that he may not have pointed out to the jury that the initials "KMM" appeared to be on the surface of the compact does not, in and of itself, make his performance deficient. The jury had the exhibit and could make its own observations about what was scratched on the surface of the compact. RP (5/29) 162. Detective Blankenship described the compact in detail to the jury, noting that it appeared to have a gold butterfly detail or bug on the top of it, but did not appear to notice the supposed initials that Schechert now argues were there. RP (5/29) 162. Further, Schechert himself did not claim at trial that the initials "KMM" were scratched into the top of the compact. RP (5/29) 268-315; 324. Instead, he simply testified that the compact and drugs were not his. RP (5/29) 268-315; 324.

Moreover, there is no basis for Schechert to conclude that by not pointing out the initials to the jury, trial counsel did no investigation. In fact, the record demonstrates the opposite is true.

Schechert relies on *State v. A.N.J.*, 168 Wn.2d 91, 225 P.3d 956 (2010), for the proposition that because trial counsel did not mention the initials of "KMM" in the compact, he was in no position to properly represent him at trial. But the situation in *A.N.J.* is nothing like the present case. In *A.N.J.*, the defendant pleaded guilty and then later moved to withdraw his plea. The Court found that defense failed to investigate on multiple fronts—he did no independent investigation on his own; did not consult with an expert; and spent little time with his client. *Id.*, 168 Wn.2d at 102. The Court was further bothered by defense's assumption that his client was going to confess or that he was likely guilty, noting that this did not excuse the duty to do some investigation into the case. *Id*, 168 Wn.2d. at 110. The Court held that while each case was different, at the very least "counsel must reasonably evaluate the evidence against the accused and the likelihood of a conviction if the case proceeds to trial so that the defendant can make a meaningful decision as to whether or not to plead guilty." *Id*, 168 Wn.2d. at 111-12.

That standard was clearly met here. Unlike the attorney in *A.N.J.*, trial counsel here did not simply sit back and concede the issues. Counsel

filed and argued pre-trial motions and consistently fought throughout the trial about whether or not certain evidence was admissible. Failing to argue that the initials "KMM" could have been scratched into the top of the compact does not, alone, render trial counsel ineffective when one examines the record as a whole.

4. Schechert cannot demonstrate that there is a reasonable probability that the verdict would have been different

Even if the Court were to find trial counsel deficient in the above areas, there was no reasonable probability that the verdict would have been more favorable absent these alleged errors. Schechert relies on *State v. Reichenbach*, 153 Wn.2d 126, 101 P.3d 80 (2004), to argue that there was no conceivable trial tactic that would explain the decisions made by trial counsel. But *Reichenbach* is clearly distinguishable from the present case. In *Reichenbach*, the Court noted that the search warrant obtaining the key evidence was invalid when executed, but that defense made no effort to challenge that warrant. *Id.*, 153 Wn.2d at 130-31. There was simply no legitimate trial tactic that could explain the attorney's failure to challenge an invalid warrant. *Id*, 153 Wn.2d. at 131. Here, there is no such glaring error. Rather, Schechert focuses on a series of decisions made by trial counsel that are easily explained as legitimate trial tactics.

Schechert focuses on what he characterizes as trial counsel's failure to concentrate the defense on the notion that the compact

containing the methamphetamine belonged to Kaylee Mead. But a review of the record illustrates that counsel did argue that it was likely the compact belonged to someone else. He elicited testimony from his client that others had visited the residence and that he did not regularly use the bedroom where the methamphetamine was located. RP (5/29) 271, 312-13. Further, the jury was clearly aware that the methamphetamine was located in an object that could have belonged to a female. They were simply convinced that Schechert was aware the drugs were in his home. While Schechert may not agree with the approach taken, he cannot show that there is a reasonable probability the verdict would have been different but for trial counsel's allegedly deficient performance.

B. THE PROSECTUOR PROPERLY ARGUED THAT SCHECHERT'S CLAIM HE MISSED COURT TO TAKE CARE OF HIS SICK UNCLE DID NOT MEET THE LEGAL DEFINITION OF AN "UNCONTROLLABLE CIRCUMSTANCE"; FURTHER, EVEN IF THERE WAS A MISSTATEMENT DURING CLOSING SCHECHERT CANNOT DEMONSTRATE THAT THIS ALLEGED MISCONDUCT AFFECTED THE VERDICT

Schechert next claims that the prosecutor committed misconduct during closing argument by misstating the law on his defense that missing court was an uncontrollable circumstance. He argues that this misstatement was prejudicial to him and that this was exacerbated by trial counsel's failure to object. This claim is without merit because there was

nothing improper in the argument made by the prosecutor and even if there were, Schechert could not show that there is a substantial likelihood that this alleged misconduct affected the verdict.

A defense counsel's failure to object during the State's closing argument generally does not constitute deficient performance because, absent egregious misstatements, attorneys do not commonly object during closing. *In re Davis*, 152 Wn.2d 647, 717, 101 P.3d 1 (2004). Only if a remark by the prosecutor is improper and prejudicial will failure to object be considered deficient performance; if the remark is both, then it will be prosecutorial misconduct. *State v. Gentry,* 125 Wn.2d 570, 643-44, 888 P.2 1105 (1995).

First, Schechert mischaracterizes the argument by the State—rather than a misstatement of the law, the prosecutor properly argued a reasonable interpretation of the law. *State v. Cross*, 180 Wn.2d 664, 726, 327 P.3d 660 (2014). The prosecutor first noted that the defense included a list of the type of excuses recognized by the legislature as being valid reasons for an individual to miss court. RP (6/2) 413. The prosecutor posited two questions for the jurors to consider about the bail jumping charge: was the real reason that Schechert missed court on February 19, 2014, so he could attend to his sick uncle, and did they believe that this qualified as a legal defense to the bail jumping charge. RP (6/2) 413. The

prosecutor then told the jury to consider the credibility of Schechert's story, arguing that it was not believable that a rehabilitation facility would allow an individual in as bad of shape as Schechert described to go home and whether or not Schechert's actions on the record when the bench warrant was quashed were consistent with the excuse. RP (6/2) 414-18. The prosecutor pointed out the definition of "uncontrollable circumstance" and argued that the excuse provided by Schechert did not fall into any of those categories. RP (6/2) 418-19.

Schechert claims that the prosecutor was urging the jury "as a matter of law" to find that Schechert's family emergency did not qualify as an uncontrollable circumstance and that by using the phrase "legal defense," the prosecutor was improperly suggesting the law did not support the defense arguments. But that is simply not the case. The use of the word "legal defense" does not in any way suggest to the jury that Schechert was not entitled to the "uncontrollable circumstances" defense. Rather, the prosecutor properly argued that if Schechert's story about missing court were to be believed, it did not fit the definition of an "uncontrollable circumstance." There is nothing improper about that argument.

Even if the remarks made by the prosecutor were improper, they were not prejudicial and do not rise to the level of prosecutorial

misconduct. Schechert cannot demonstrate that there is a reasonable probability that objecting to this argument would have changed the verdict. The phrase that Schechert appears to be concerned with is "legal defense" and that was only used a few times in a seven-page argument. RP (6/2) 413-19. Not objecting to the argument made by the prosecutor was a tactical decision—rather than draw attention to it, trial counsel chose to address it in his own closing. There was no egregious misrepresentation of the law here as Schechert suggests, and therefore it was not improper for trial counsel to choose not to object to it.

C. THE TRIAL COURT PROPERLY ALLOWED TESTIMONY BY CHRSTOPHER HUTCHINSON THAT A WEEK AND A HALF PRIOR TO SCHECHERT'S ARREST HE AND SCHECHERT HAD SMOKED METHAMPHETAMINE IN SCHECHERT'S HOME BY WEIGHING THE FACTORS PURSUANT TO ER 404(B) BEFORE PERMITTING THE EVIDENCE

Schechert lastly claims that the trial court erred by allowing a witness to testify that he had shared drugs with him weeks before the search of his house, thus admitting impermissible 404(b) evidence. He argues that the court failed to properly go through the 404(b) factors and there was a reasonable probability that the outcome of the trial was affected by this evidence. This claim is without merit because there was extensive argument on the record regarding this evidence and the trial

court properly went through the factors before permitting Christopher Hutchison's testimony.

A trial court's evidentiary rulings are reviewed for abuse of discretion. A trial court abuses its discretion when "its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons, *i.e.*, if the court relies on unsupported facts, takes a view that no reasonable person would take, applies the wrong legal standard, or bases its ruling on an erroneous view of the law." *State v. Hudson*, 150 Wash. App. 646, 652, 208 P.3d 1236 (2009).

Before evidence of prior bad acts is admitted under ER 404(b), the trial court must (1) find by a preponderance of evidence that the misconduct occurred; (2) identify the purpose for which the evidence is to be admitted; (3) determine whether the evidence is relevant to prove an element of the crime charged; and (4) weigh the probative value against the prejudicial effect. *State v. Gresham*, 173 Wn.2d 405, 421, 269 P.3d 207 (2012). This analysis must be conducted on the record. *State v. Sublett*, 156 Wn. App. 160, 195, 231 P.3d 231 (2010).

Prior evidence of drug use can be relevant to show that a defendant had knowledge that the drugs were in the house. In *State v. Weiss*, 73 Wn.2d 372, 438 P.2d 610 (1968), the trial court properly allowed testimony by an occupant of the house where the drugs were found that he

and the defendant had smoked marijuana in that house on prior occasions. This was found to be relevant because Weiss denied knowing that the drugs were there. *Id.* Conversely, in *State v. Pogue*, 104 Wn. App. 981, 17 P.3d 1272 (2001), the Court found that it was improper to permit evidence that the defendant had a prior drug conviction--because Pogue's defense was that he did not know the drugs were in the car, the only logical relevant for the evidence was for propensity, precisely what is barred under ER 404(b). *Id.*, 104 Wn. App. at 985. The *Pogue* Court noted that the key was that there was an independent purpose for the admission of the evidence in *Weiss*. *Id.*, 104 Wn. App. at 986.

The issue of Schechert's prior use of drugs in his home was first raised during pre-trial motions. RP (5/12) 2-16. The trial court initially ruled that the testimony was inadmissible, but that it would reconsider the issue if the State could produce evidence that a witness had used drugs with the defendant in his house close in time to his arrest on June 5, 2013. RP (5/12) 15.

After the State's case in chief and the defense case, the State moved to present evidence in rebuttal that Christopher Hutchison had seen Schechert do drugs in the house a few weeks prior. The trial court stated that it would not allow such evidence in to show propensity, but that under ER 404(b), it would be permitted to show absence, mistake, intent, or

knowledge. RP (5/29) 344. The court noted that the connection in this case was that the prior incident was close in time and in the same room. RP (5/29) 344. The evidence here was being allowed in for the purpose of rebutting an unwitting possession defense or to establish that Schechert had knowledge that the drugs were in that room. RP (5/29) 347. Mr. Hutchison said that he had been at Schechert's residence about a week and a half prior to June 5, 2013, the day the search warrant was served. RP (6/2) 385-86. He said that when he was there, he watched Schechert go into one of the back bedrooms and return with a pipe. RP (6/2) 387. They then shared the pipe and both smoked methamphetamine. RP (6/2) 387-88. Schechert denied that they had ever smoked methamphetamine together. RP (6/2) 396.

Schechert contends that the trial court did not go through the ER 404(b) analysis on the record, but that claim is without merit. The issue was first raised during pre-trial motions and after argument the trial court initially did not permit the evidence. RP (5/12) 15. After the State's case in chief and the testimony of Schechert, the issue was raised again. After extensive discussion, the trial court permitted the evidence in the State's rebuttal case. RP (5/29) 337-48.

He also argues that the trial court was required to assess Mr. Hutchison's credibility in order to make a finding by a preponderance that

the misconduct occurred and that the trial court failed to do so. However, Mr. Hutchison had already testified. RP (5/29) 229-34. The trial court had the opportunity during his testimony to assess his credibility. And, assessing the credibility is only part of the analysis. While the trial court may not have explicitly named each factor in its reasoning, it is clear by examining the record that the trial court conducted a thorough analysis before admitting the ER 404(b) evidence. Moreover, it is clear the trial court was cautious about allowing testimony that other individuals had used drugs in Schechert's house. It correctly noted that such evidence was prior bad acts of Schechert and could be highly prejudicial. RP (5/29) 296-97. The trial court clearly differentiated between general testimony on this issue and the testimony of Mr. Hutchison, where there was a direct connection.

Further, Schechert claims that it is highly likely that the jury used the testimony that he had used drugs on a prior occasion as proof that he had a propensity to possess and use methamphetamine. But, there was a limiting instruction read by the trial court after Mr. Hutchinson testified about Schechert's prior drug use. RP (6/2) 388-89. That instruction was discussed and agreed upon by trial counsel and specifically told the jury that they could only consider Mr. Hutchinson's testimony for the purpose of considering Schechert's knowledge of the "alleged methamphetamine

located in the defendant's home on June 5, 2013." RP (6/2) 370. Juries are presumed to follow instructions and Schechert can point to nothing on the record that would indicate otherwise. The trial court properly weighed the ER 404(b) factors before correctly permitting the testimony of Mr. Hutchison.

IV. CONCLUSION

For the foregoing reasons, Schechert's conviction and sentence should be affirmed.

DATED June 1, 2015.

Respectfully submitted,
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